

WHAT IS BID RIGGING?

Bid rigging occurs when bidders at an auction or on a contract let for competitive bidding, agree among themselves that a certain one of them will be allowed to win, or that they will not bid against one another. For example, if two bidders agree that one will not bid above a certain price or will submit a high complementary bid so the other bidder can win, both are guilty of bid rigging. Bid rigging may also occur when the conspiring bidders agree to take turns being the winning low bidder.

Many businesses and government agencies ask their suppliers to bid on contracts. Bid rigging prevents these businesses, and their customers, from getting the best price possible.

While Pennsylvania does not yet have its own antitrust law, the Pennsylvania General Assembly has enacted a law specifically prohibiting bid rigging directed against the Commonwealth, its agencies or its political subdivisions. This law has already proven its value in uncovering several bid-rigging schemes and recovering damages for the Commonwealth and other governmental agencies.

ARE THERE OTHER ACTIVITIES THAT VIOLATE THE ANTITRUST LAWS?

Yes. Other activities that may be illegal, depending on the circumstances, include requiring a buyer of one product (the “tying product”) to buy another product (the “tied product”) from the same seller; trying to obtain a monopoly in a market through predatory conduct; merging two companies that compete with one another; or entering into an agreement that unreasonably restrains trade by excluding competitors or affecting prices.

WHAT CAN HAPPEN IF SOMEONE IS CAUGHT VIOLATING THE ANTITRUST LAWS?

The antitrust laws provide for civil remedies and criminal penalties. Companies found guilty of illegal conduct can be fined, enjoined from engaging in the illegal activities, and required to pay damages and attorneys’ fees. Individuals are subject to all of these penalties and, in addition, can be sent to jail if the violation is serious enough. The antitrust laws also provide that persons or businesses injured by the illegal conduct can recover three times the amount of their actual damages. Individuals and companies may also be barred from government contracts if they have been found guilty of violating the antitrust laws.

WHO ENFORCES THE ANTITRUST LAWS?

In Pennsylvania, the Office of Attorney General, through its Antitrust Section, has the authority to bring civil actions under the antitrust laws on behalf of the Commonwealth (including its agencies and political subdivisions) and its citizens. The United States Department of Justice and the Federal Trade Commission also have enforcement powers.

Finally, private individuals and companies who have been hurt by antitrust violations can sue to recover damages and stop the illegal conduct.

WHAT CAN I DO TO AVOID VIOLATING THE ANTITRUST LAWS?

Every business should develop a program for its employees to be sure they understand the “do’s” and “don’ts” of the antitrust laws. Moreover, if you have any situations where you aren’t sure of your rights and obligations, consult your lawyer before you act. A good rule of thumb is that agreements of any kind with competitors are suspect and should always be reviewed.

WHAT CAN I DO IF I THINK I’M THE VICTIM OF A VIOLATION OF THE ANTITRUST LAWS?

If you believe that a business or individual may be violating the antitrust laws, you can contact the Office of Attorney General:

OFFICE OF ATTORNEY GENERAL
ANTITRUST SECTION
14th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-4530

Remember, this booklet is not “legal advice.” This booklet is only intended to alert you to the common types of activities that raise antitrust issues. If you have any question about whether specific activities may violate the antitrust laws, consult your attorney.



OFFICE OF
ATTORNEY GENERAL

COMMONWEALTH OF PENNSYLVANIA



HOW THE
FEDERAL
ANTITRUST
LAWS
CAN WORK
FOR YOU

JERRY PAPPERT
Attorney General



Dear Pennsylvania Business:

I am pleased to provide you with my booklet “What You Should Know About the Antitrust Laws.”

In the words of the United States Supreme Court, the antitrust laws “are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.”

For the past 105 years, the antitrust laws have helped to protect competition and strengthen our economy. While antitrust laws are often complicated and their enforcement requires careful judgment, they share one goal: consumers and businesses should not be deprived of the benefits and opportunities of free and open competition.

As your Attorney General, I will continue to ensure that competition in the Commonwealth thrives. This pamphlet, other educational efforts and vigorous enforcement are all part of that effort.

Gerald J. Pappert
Attorney General

WHY DO WE WANT COMPETITION?

When sellers have to compete against each other, each seller will try his or her best to attract buyers. Consumers will therefore have the opportunity to buy higher quality goods at lower prices than they are likely to get without competition.

Competition also promotes efficiency. In order to lower prices and remain profitable, sellers must attempt to cut costs.

The best argument in favor of an economic system based on competition is that it works better than anything anyone else has tried. All over the world, economic systems are crumbling and are being replaced with free markets. Vigorous competition will play an important role in a strong Commonwealth economy.

I’VE HEARD THAT THE ANTITRUST LAWS ARE ANTI-BUSINESS. DON’T THEY JUST GIVE THE GOVERNMENT AN EXCUSE TO INTERFERE?

No. The antitrust laws are not anti-business; they are pro-competition. The only people who benefit from the anti-competitive activities that the antitrust laws prohibit are the very few individuals and businesses who cheat their competitors and the public.

In fact, enforcement of the antitrust laws helps businesses who try to compete using their skill and energy. As you will see in the examples that follow, businesses - as well as consumers - are the victims of antitrust violations.

WHAT DO THE ANTITRUST LAWS PROHIBIT?

Although the antitrust laws address many kinds of anticompetitive conduct, there are certain kinds of activities that are always suspect. These are price fixing, agreements to maintain resale prices, market divisions or customer allocations, group boycotts, and bid rigging. All of these activities are designed to restrict competition.

WHAT IS PRICE FIXING?

Price fixing occurs when sellers of the same product or service agree to set actual prices, establish limits on prices or discounts, or fix price-related terms of sale. For example, if several appliance manufacturers at a trade association meeting agree not to allow their prices to go below a certain minimum, they are engaging in illegal price fixing.

This conspiracy hurts appliance dealers because they have to pay more to the manufacturers for their products; it hurts consumers because the appliance dealers may raise retail prices.

WHAT IS RESALE PRICE MAINTENANCE?

Illegal resale price maintenance occurs when a buyer agrees not to sell a product at a different price than the price dictated by the seller. For example, if a retailer of X-brand typewriters agrees with the manufacturer of X-brand that the typewriters will be sold at retail for \$350, the retailer and manufacturer have engaged in unlawful resale price maintenance.

Illegal resale price maintenance hurts retail businesses who want to increase their sales by lowering their prices, and it hurts consumers because they can’t shop among retail stores for the best deal.

WHAT IS MARKET DIVISION?

Market divisions and customer allocations occur when competitors agree to allocate customers among themselves. These schemes often take the form of territorial allocations, customer allocations, or agreements not to sell particular products in specific areas. For example, if two competing bakeries agree that one will sell only to the north end of town, and the other will sell only to the south end, they have illegally engaged in a territorial market division.

This kind of activity hurts both businesses (such as schools, restaurants and hospitals) and consumers who buy bread and other bakery products; the two bakeries will be able to charge artificially higher prices because they don’t have to compete with each other.

WHAT IS A GROUP BOYCOTT?

A group boycott exists where companies or individuals agree not to deal with another business for economic reasons. For example, if three suppliers agree with one another not to sell to a particular discount retailer (because they are trying to maintain retail prices at a higher level), those suppliers have engaged in an illegal group boycott.

A group boycott will not only hurt the business it’s aimed at, but it will also hurt customers who were benefitting from the lower prices offered by that business.